

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In re:)
NPCR, INC. d/b/a NEXTEL PARTNERS)
Petition for Waiver of Sections 54.307(c) and)
54.314 of the Commission's Rules)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

CC Docket 96-45

To: The Commission

PETITION FOR WAIVER – EXPEDITED TREATMENT REQUESTED

NPCR, Inc. d/b/a Nextel Partners (“Nextel Partners”), by its counsel and pursuant to Sections 1.3 and 1.925(b) of the Commission’s Rules,¹ hereby requests waivers of Section 54.307(c) of the Commission’s Rules, which governs the timing of filing working loop data, and Section 54.314 of the Commission’s Rules, which requires state certification of Universal Service Fund (“USF”) High Cost Program support for rural carriers.² Nextel Partners was designated as an Eligible Telecommunications Carrier (“ETC”) in the State of Wisconsin on September 30, 2003, and seeks waivers of the foregoing rules in order to receive High Cost Program funding commencing on the date of ETC designation.

Specifically, Nextel Partners seeks (i) a waiver of Section 54.307(c)’s requirement that quarterly working loop data be filed on March 30, 2003 (for loops as of September 30, 2002) to allow for commencement of funding in the Third Quarter of 2003;³ and (ii) waiver of the annual state certification requirements set forth in Section 54.314 of the

¹ 47 C.F.R. §§ 1.3 and 1.925.

² See 47 C.F.R. § 54.314 (2002).

³ September 30, 2003, the date on which Nextel Partners was designated an ETC in Wisconsin, is within the 3rd Quarter of 2003.

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Rules that would otherwise require that the State of Wisconsin file its annual certification of use of high cost funds for rural telephone company study areas on April 1, 2003 (nearly six months *before* Nextel Partners was designated an ETC in Wisconsin) to allow for funding in the Third and Fourth Quarters of 2003. Waivers of the referenced Rules will enable Nextel Partners to begin to receive USF High Cost Program subsidies commencing on the date of Nextel Partners' designation, September 30, 2003, in the rural telephone company study areas in Wisconsin for which Nextel Partners has obtained ETC status.⁴

In support of this Petition for Waiver, the following is respectfully shown:

I. BACKGROUND

Nextel Partners is a commercial mobile radio service ("CMRS") provider in the State of Wisconsin and operates an advanced digital wireless network providing mobile telecommunications services under the "Nextel" brand name. On April 24, 2003, Nextel Partners filed a petition with the Public Service Commission of Wisconsin ("PSCW") seeking designation as an ETC in certain rural telephone company study areas (hereafter, the "Designated Areas").⁵ On September 30, 2003, the PSCW issued an order designating Nextel Partners an ETC in the Designated Areas.

⁴ A list of the rural telephone company study areas in Wisconsin for which Nextel Partners has been designated an ETC is included in **Exhibit A** hereto.

⁵ See **Exhibit A** hereto.

II. THE NEED FOR THE WAIVERS

A. Waivers of 47 C.F.R. Section 54.307(c)

1. Background

As a prerequisite for the receipt of USF support, Section 54.307 of the Commission's Rules requires competitive ETCs to file working loop data in accordance with a quarterly schedule.⁶ Nextel Partners received ETC designation in the State of Wisconsin on September 30, 2003. Under Section 214(e) of the Communications Act of 1934, as amended (the "Act"), Nextel Partners became eligible to begin receiving High Cost Program USF support from that date forward.⁷ However, the Universal Service Administrative Company ("USAC"), pursuant to its internal policies, bases those payments on quarterly data submissions scheduled by the Commission's Rules to occur several months in advance of the quarter for which payments are received. This schedule is set forth in Table 1 and Table 2 in Exhibit C hereto.

2. Waiver of March 30, 2003 Deadlines for Working Loop Data Submission for Loops as of September 30, 2002

In order to receive High Cost Program USF support payments from USAC commencing on September 30, 2003, the date Nextel Partners was designated an ETC in Wisconsin, Nextel Partners would have to have filed working loop data for HCL, LTS, LSS and ICLS no later than March 30, 2003, some six months before Nextel Partners' ETC designation was obtained in Wisconsin (and nearly a month before Nextel Partners had even filed its Petition for Designation in Wisconsin). See Table 1 and Table 2 in Exhibit C hereto. Nextel Partners did not make the March 30, 2003 working loop data

⁶ See 47 C.F.R. Section 54.307(c).

⁷ See 47 U.S.C. § 214(e).

filings and USAC staff has recommended that Nextel Partners file the instant waiver request to allow USAC to accept data submissions at dates later than provided for under Section 54.307(c) of the Commission's Rules. Nextel Partners will prepare and submit the requisite filings including working loop data as of September 30, 2002 promptly upon grant of the requested waiver.

B. Waiver of State Certification Requirement in 47 C.F.R. Section 54.314

Under Section 54.314 of the Commission's Rules, in order for an ETC to receive USF support for rural telephone company study areas in a State that has chosen to exercise jurisdiction over ETC designations, the State must file an annual certification with the Commission and with the Universal Service Administrative Company ("USAC") stating that all federal high-cost support will be used only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.⁸ The annual certification under Sections 54.314 of the Rules, due by October 1, is required to make USF High Cost Program funding available for the First through Fourth Quarters of the *succeeding* calendar year.

On October 1, 2003, the PSCW submitted an annual certification in accordance with 47 C.F.R. § 54.314 to both USAC and the Commission regarding Nextel Partners' use of USF funds.⁹ As a result, Nextel Partners is eligible to begin receiving USF support in the First Quarter of 2004. There is no mechanism, however, for a newly-designated ETC such as Nextel Partners to receive support for the approximate three-month period

⁸ See 47 C.F.R. § 54.314.

⁹ A copy of the PSCW's letter to USAC and to the Commission is reproduced as **Exhibit B** hereto.

commencing September 30, 2003, the date Nextel Partners was designated an ETC in Wisconsin.

According to the certification schedules set forth in Section 54.314 of the Rules, in order for Nextel Partners to receive USF High Cost funding in rural telephone company study areas commencing September 30, 2003, (which falls at the end of the third quarter of 2003) the PSCW would have to have filed an annual certification for Nextel Partners no later than April 1, 2003.¹⁰ The PSCW did not submit the requisite annual certification by April 1, 2003, because Nextel Partners was not yet designated as an ETC. As a result, a waiver of Section 54.314 of the Rules is needed to allow Nextel Partners to receive USF High Cost Program funding for the time period September 30, 2003 through December 31, 2003.

III. REQUEST FOR WAIVERS

Section 1.3 of the Commission's Rules, 47 C.F.R. § 1.3, allows the FCC to waive the application of any rules for good cause shown. In addition, Section 1.925(b)(3) provides for a waiver where it is shown that,

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by the application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹¹

¹⁰ See 47 C.F.R. § 54.314(d)(3).

¹¹ See 47 C.F.R. § 1.925(b)(3).

Federal courts hold that the Commission “may exercise its discretion to waive a rule where particular facts would make strict compliance inconsistent with the public interest.”¹²

As noted above, strict application of the working loop data submission deadlines set forth in Section 54.307(c) of the Rules and the annual state certification requirements set forth in Section 54.314 of the Rules in this instance would create the unintended consequence with respect to Nextel Partners of delaying USF High Cost support for months after September 30, 2003, the date Nextel Partners was designated an ETC in the State of Wisconsin. Unless the waivers are granted, USAC would not make timely and appropriate USF High Cost Program payments to Nextel Partners, despite the fact that Nextel Partners will be functioning as an ETC and providing supported services during the third and fourth quarters of 2003. A delay in Nextel Partners’ funding due to the strict application of Sections 54.307(c) and 54.314 of the Rules would be inconsistent with the Commission’s public policy goals of bringing access to mobile telecommunications technologies to all citizens. Indeed, the Commission recently observed that facilitating access to spectrum-based, wireless and mobile communications technologies is “an especially important Commission goal ... not just in urban markets but also in rural areas, to enable Americans who travel, reside or conduct business throughout the country to communicate effectively for the benefit of the general public interest.”¹³

¹² *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

¹³ *See In the Matter of Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access*

USF funding is vital to Nextel Partners' ability to carry out its mission as an ETC because it will allow Nextel Partners to pursue the construction and upgrading of its network to better serve customers in the Designated Areas. Nextel Partners should not be unfairly handicapped, stalled or otherwise delayed in pursuing its mission as an ETC by the strict application of rules that were never intended to undermine the purpose of an ETC designation. Nextel Partners should not be denied months of USF High Cost Program support to which it is otherwise entitled merely because working loop data were not filed prior to grant of the ETC designation in this case, and the State of Wisconsin did not file the Section 54.314 annual certification by the April 1, 2003 deadline, nearly a month before Nextel Partners even filed its application in Wisconsin.

Grant of Nextel Partners' petition for waiver would clearly serve the public interest and is fully consistent with Sections 1.3 and 1.925(b)(3) of the Commission's Rules, as well as with the Commission's goal of competitive neutrality in USF support. The universal service program is intended to promote access to telecommunications services in areas where telephone subscribership has been historically low. Nextel Partners' universal service program furthers this goal by providing the USF supported services to citizens in the Designated Areas over an advanced digital mobile nationwide network. High Cost Program funding will enable Nextel Partners promptly to begin upgrading and constructing new facilities to provide quality services to Wisconsin residents.

to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation, Notice of Proposed Rulemaking, WT Docket Nos. 02-381; 01-14; 03-202 at ¶ 8 (rel. October 6, 2003).

The limited waivers that Nextel Partners seeks are fully consistent with and supported by well-established Commission precedent. Indeed, the Commission has granted numerous similar waiver requests.¹⁴ In granting such waivers, the Commission has identified an ETC designation date as being a “special circumstance” that warrants a limited waiver to allow a new ETC to file retroactive certifications and line counts so that ETC support can commence.¹⁵

Further, in granting a waiver to the State of West Virginia for the late filing of its certification for non-rural ETCs, the Commission reasoned that, “the potential harm that would be suffered by customers [of the carriers] . . . justifies a waiver.”¹⁶ In the *West Virginia Waiver Order*, the Commission found that the loss of a quarter of USF funding in similar circumstances would be “egregious.”¹⁷

Because grant of the requested waivers is fully consistent with the Commission’s rules and precedent and would allow Nextel Partners to better carry out its mission as an ETC in furtherance of the public interest, and because a delay in receipt of funds by Nextel Partners could have the egregious and unintended consequence of unnecessarily

¹⁴ See, e.g., *N.E. Colorado Cellular, Inc., Petition for Waiver of Section 54.314(d) of the Commission’s Rules*, 2003 FCC Lexis 4186, DA 03-2482 (rel. July 25, 2003); *Guam Cellular and Paging, Inc., Petition for Waiver of Section 54.314 of the Commission’s Rules and Regulations*, 18 FCC Rcd 7138 at ¶ 7 (2003); *RFB Cellular, Inc., Petition for Waiver of Section 54.314(d) and 54.307(c) of the Commission’s Rules and Regulations*, 17 FCC Rcd 24387 (2002); and *Smith Bagley, Inc. Petition for Waiver of Section 54.809(c) of the Commission’s Rules and Regulations*, 16 FCC Rcd 15275 (2001).

¹⁵ See *id.*

¹⁶ *West Virginia Public Service Commission, Request for Waiver of State Certification Requirements for High-Cost Universal Service Support for Non-Rural Carriers*, 16 FCC Rcd 5784, 5786 (2001) (“*West Virginia Waiver Order*”).

¹⁷ *Id.*

delaying implementation of the important goals of USF high cost support, the Commission should act promptly to grant Nextel Partners' requested waiver.

IV. REQUEST FOR EXPEDITED ACTION

Action on these waiver requests must be expedited in order to ensure that vital USF High Cost support to Nextel Partners can commence as soon as possible. In order to meet its current obligations as an ETC, Nextel Partners must be able to receive, on a timely basis, the support for which it is eligible upon designation as an ETC. Expedited action is critical because Nextel Partners has already been designated as an ETC in the State of Wisconsin and would otherwise be required to provide, without the benefit of subsidies, USF supported services for which other ETCs receive funding. Grant of the requested waiver would minimize economic and competitive damage caused by the delay in receipt of USF support.

V. CONCLUSION

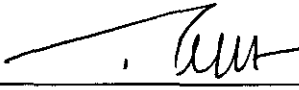
Nextel Partners requests that: (i) the Commission waive the strict application of Sections 54.307(c) of the Commission's Rules to the extent necessary to allow the acceptance of working loop data otherwise due to be filed on March 30, 2003, to allow High Cost Program Funding to be paid out in the Third and Fourth Quarters of 2003,¹⁸ and (ii) the Commission waive the strict application of Section 54.314 of the Rules to treat the PSCW's October 1, 2003 annual certifications of Nextel Partners' use of USF High Cost Program funds as timely filed for purposes of allowing Nextel Partners to begin receiving USF High Cost subsidies as of September 30, 2003.

¹⁸ Nextel Partners will prepare and submit the requisite working loop data promptly upon receipt of the waiver.

WHEREFORE, for good cause shown, Nextel Partners respectfully submits that the requested waivers of the Commission's Rule will serve the public interest, and should be granted on an expedited basis.

Respectfully submitted,

NEXTEL PARTNERS, INC.

By: 
Albert J. Catalano
Matthew J. Plache
Ronald J. Jarvis
Catalano & Plache, PLLC
3221 M Street, N.W.
Washington, D.C. 20007
(202) 338-3200
(202) 338-1700 facsimile

November 7, 2003

EXHIBIT A

Rural Telephone Company Study Areas in Wisconsin
for which Nextel Partners has been designated an ETC

APPENDIX B

Rural Operating Companies for which Nextel requests ETC certification for the entire service territory:

Amherst Tel. Co.	Frontier Communications – Viroqua
Badger Telecom, Inc.	Frontier Communications – Wisconsin, Inc.
Bayland Tel. Co.	Grantland Telecom, Inc.
Belmont Tel. Co.	Hillsboro Tel. Co.
Bloomer Tel. Co.	Indianhead Tel. Co.
Bonduel Tel. Co.	Lakefield Tel. Co.
Bruce Tel. Co., Inc.	Lemonweir Valley Tel. Co.
Chibardun Tel. Co-op.	Manawa Tel. Co.
Citizens Tel Co-op. - Wis.	Marquette-Adams Tel. Co-op.
Cochrane Tel. Co-op.	Mosinee Tel. Co.
Cuba City Exchange Tel. Co.	Nelson Tel. Co-op.
Dickeyville Tel. Co.	Northeast Tel. Co.
CenturyTel of the Midwest – Kendall	Siren Tel. Co., Inc.
CenturyTel of Wisconsin – Fairwater- Brandon-Alto	Stockbridge & Sherwood Tel. Co.
CenturyTel of Wisconsin – Forestville	Telephone USA of Wisconsin, LLC
CenturyTel of Wisconsin – Larsen- Readfield	Tenney Tel. Co.
CenturyTel of Monroe County, LLC	Tri-County Tel. Co-op.
EastCoast Telecom, Inc.	Union Tel. Co.
Farmers Independent Tel. Co.	Vernon Tel. Co-op.
Farmers Tel. Co. of Wis.	Waunakee Tel. Co.
Frontier Communications – Mondovi	West Wisconsin Tel. Co-op.
	Wittenberg Tel. Co.
	Wood County Tel. Co.

Rural Operating Companies for which Nextel requests ETC certification for individual exchanges, but not the whole service territory:

CenturyTel of the Midwest – Wisconsin	Casco Coleman Freemont Goodman Harmony	Platteville Shell Lake Thorp Wayside Weyauwega
CenturyTel of the Midwest – WI / Northwest	Boyd Cadott Chetek De Forest Poynette	Ripon Tomah Warrens Wild Rose
Scandinavia Tel. Co.	Iola	
CenturyTel of Northwest Wisconsin, LLC	Lake Nebagamun	
CenturyTel of Northern Wisconsin, LLC	Gilman Holcombe Jim Falls	
CenturyTel of Central Wis.	Alma Center Arcadia Augusta Bangor Black Creek Black River Falls Centerville Cleghorn Denmark Fairchild Fall Creek Fountain City Galesville	Holmen Luxemburg Merrilan Mindoro New Franken Osseo Pickett Rosendale Seymour Shicoton Trempealeau Wautoma

EXHIBIT B

Annual Certification Regarding Nextel Partners
Sent by the PSCW to USAC and the Commission
On October 1, 2003



Public Service Commission of Wisconsin

Burnetta Bridge, Chairperson
Ave M. Bic, Commissioner
Robert M. Garvin, Commissioner

610 North Whitney Way
P.O. Box 7854
Madison, WI 53707-7854

Via Email and US Mail

October 1, 2003

Ms. Marlene H. Dortch
Office of the Secretary
Federal Communications Commission
445 - 12th Street, SW
Washington, DC 20554

Ms. Irene Flannery
Universal Service Administrative Company
2120 L Street, NW - Suite 600
Washington, DC 20037

RE: Designation of Ten Wireless Companies as Eligible Telecommunications Carriers

**Certification of Carrier Eligibility for Federal High Cost Support in Compliance
with 47 C.F.R. § 54.314.**

Affidavits as to Use of Federal Support

Dear Ms. Dortch and Ms. Flannery:

On September 30, 2003, the Public Service Commission of Wisconsin (Commission) forwarded to you ten orders that designated the following wireless providers as eligible telecommunications carriers (ETCs) in Wisconsin for federal purposes.

ALLTEL Communications, Inc., ALLTEL Wireless of Wisconsin RSA#1, LLC and ALLTEL Wireless of Wisconsin RSA#7, LLC	7131-TI-101
NPCR, Inc., d/b/a Nextel Partners	8081-TI-101
Metro Southwest PCS, LLP	8123-TI-100
Brown County MSA Cellular Limited Partnership	8159-TI-100
Wisconsin RSA #3 Limited Partnership	8194-TI-101
Wisconsin RSA #4 Limited Partnership	8195-TI-101
Wisconsin RSA #10 Limited Partnership	8201-TI-101

Telephone: (608) 266-5481
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Fax: (608) 266-3957

TTY: (608) 267-1479
E-mail: pscsecs@psc.state.wi.us

Marlene Dortch and Irene Flannery
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Nsighttel Wireless	8202-TI-101
Midwest Wireless Wisconsin, LLC	8203-TI-100
Wausau Cellular Telephone Company Limited Partnership	8250-TI-100

Paragraph 8 of the ordering section of those orders stated the following (revised per company accordingly):

Based on the affidavit of Dan Fabry, Vice President and Chief Operating Officer, Brown County is an ETC within the meaning of 47 U.S.C. § 214 (c) and is eligible to receive funding pursuant to 47 U.S.C. § 254 (2). This order constitutes the certification to this effect by the Commission.

This letter forwards a copy of the affidavits that were referred to in these orders. Each affidavit indicates that the wireless provider will use federal support only for the purposes intended. For instance, the affidavit of Brown County MSA Cellular Limited Partnership states:

Carrier hereby states that it will use the Federal High-Cost Support Funds only for the provision, maintenance, and upgrading of facilities and services for which the support is intended pursuant to § 254(e) of the Federal Telecommunications Act of 1996.

Based on these affidavits, it is these provisions that were certified to, by the Commission, in the above-referenced orders.

If there are any additional questions, please contact me at (608) 266-6744.

Sincerely,



Gary A. Evenson
Acting Administrator
Telecommunications Division

GAE:t/ss/letter/2003/ETC affidavit letter

Enclosures -- 10 affidavits

CC via email only: Mike Speed, USAC
Craig Davis, USAC

**AFFIDAVIT OF NPCR, INC. d/b/a NEXTEL PARTNERS
REGARDING USE OF FEDERAL HIGH-COST SUPPORT FUNDS**

STATE OF WASHINGTON)
) ss.
COUNTY OF KING)

Donald J. Manning, being first duly sworn on oath, states:

1. I serve as Vice President and General Counsel of Nextel Partners, Inc. and each of its subsidiaries, including, without limitation, NPCR, Inc. d/b/a Nextel Partners (the "Company").

2. I am a corporate officer responsible for certifying the Company's use of Federal High Cost Support Funds.

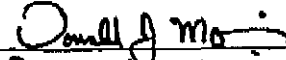
3. The Company has been recently designated as an eligible telecommunications carrier within the meaning of § 214(e) of the Federal Telecommunications Act of 1996 (the "Act") and is eligible to receive universal service support pursuant to § 254(e) of the Act.

4. The Company files this affidavit in compliance with the Federal Communications Commission's ("FCC") Order of May 23, 2001, in Docket No. 96-45, which requires states to certify to the FCC and fund administrator, Universal Service Administrative Company, that all Federal High-Cost Support within this State be used only for the provision, maintenance and upgrading of facilities and services for which the support is intended.

Company hereby states that it will use the Federal High Cost Support Funds for the construction, maintenance, and upgrading of facilities and services for which the company is eligible pursuant to § 254(e) of the Federal Telecommunications Act of 1996.

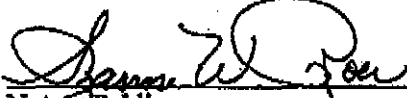
Dated: September 26, 2003

NPCR, Inc. d/b/a/ Nextel Partners



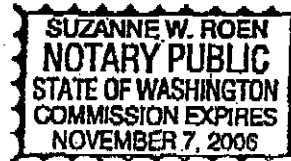
By: Donald J. Manning
Its: Vice President and General Counsel

Subscribed and sworn to before me
this 26 day of September, 2003.



Notary Public

My Commission Expires 11/7/06



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EXHIBIT C

TABLE 1

**Competitive Carrier Line Count Submissions for High Cost Loop ("HCL"),
Local Switching Support ("LSS") and Long Term Support ("LTS")**

Scheduled Date of Submission	Pertains to Working Loop Data as of	Allows USF High Cost Funding For
March 30 th of each year	September 30 th of <i>prior</i> calendar year	Third and Fourth Quarter of <i>current</i> calendar year
July 31st of each year	December 31 of <i>prior</i> calendar year	First Quarter of <i>following</i> calendar year
September 30th of each year	March 31 st of <i>current</i> calendar year	First Quarter of <i>following</i> calendar year
December 30th of each year	June 30 th of <i>current</i> calendar year	Second Quarter of <i>following</i> calendar year

USAC's schedule for funding of Interstate Common Line Support ("ICLS") is as follows:

TABLE 2

**Competitive Carrier Line Count Submissions for
Interstate Common Line Support ("ICLS")**

Scheduled Date of Submission	Pertains to Working Loop Data as of	Allows USF High Cost Funding For
March 30 th of each year	September 30 th of <i>prior</i> calendar year	Third and Fourth Quarter of <i>current</i> calendar year
July 31st of each year	December 31 of <i>prior</i> calendar year	First Quarter of <i>following</i> calendar year
September 30th of each year	March 31 st of <i>current</i> calendar year	First Quarter of <i>following</i> calendar year
December 30th of each year	June 30 th of <i>current</i> calendar year	Second Quarter of <i>following</i> calendar year